

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

EQ NORTHEAST, INC.,

Plaintiff,

vs.

FIRST AMERICAN ENGINEERED
SOLUTIONS, L.L.C., and GERALD
MORRIS

Defendants.

Case No. **07-C-0027**

PRELIMINARY INJUNCTION

The Court, having reviewed and considered the allegations made in the Complaint, the arguments and factual averments made in Plaintiff's Motion for a Preliminary Injunction, and the Declaration of Kevin T. Franklin, and the arguments of counsel, hereby finds that EQ Northeast, Inc. ("EQ") has demonstrated that:

1. A preliminary injunction is necessary to preserve the *status quo* and to prevent irreparable harm to EQ during the pendency of this action.
2. There is a substantial likelihood that EQ will succeed on the merits of its breach of contract claim stated in the Complaint. The defendants are under a unequivocal contractual obligation, explicitly subject to compulsion by specific performance, pursuant to the parties' settlement agreement (the "Settlement Agreement") to deposit all funds received from the U.S. Army Corps of Engineers ("the Corps") as payment on the Corps Contract into a General Escrow Account established pursuant to the parties' Settlement Agreement. First American has received payment from the Corps in the amount of approximately \$108,000 as payment on the Corps Contract (the "Corps Future Payment"), but despite that obligation and

EQ's demands that it be honored, the defendants have failed and/or refused to deposit the Corps Future Payment in the General Escrow Fund and have misappropriated, diverted and/or concealed the those funds. As a result, EQ has a substantial likelihood of establishing breaches by defendants of their contract with EQ, and that EQ is entitled to the equitable remedy of specific performance of the defendants' obligations to fund the General Escrow Account.

3. Absent entry of a Preliminary Injunction, EQ will suffer irreparable injury for which it has no adequate remedy at law. EQ seeks specific performance of the defendants' obligations to deposit the Corps Future Payment in the General Escrow Account. Absent the requested equitable relief during the pendency of this action, the defendants may misappropriate, divert and/or conceal, the Corps Future Payment thereby frustrating the Court's ability to grant the specific relief which EQ has requested, thereby leaving EQ without an adequate remedy.

4. The balance of the equities strongly favors the issuance of a Preliminary Injunction. The defendants have no right to continued possession and control of the Corps Future Payment and, as a result, will not suffer any cognizable legal injury if the Court enjoins them from transferring, dissipating or concealing such funds until such a time as the Court may grant relief on EQ's request for specific performance. The Settlement Agreement which compels the defendants to deposit those funds into the General Escrow Account itself arose from the compromise of a previous lawsuit alleging misappropriation of similar contract funds by the defendants which prompted this Court to grant a temporary restraining order and preliminary injunction similarly enjoining the defendants. In contrast, EQ seeks only enforcement of its contractual rights and to ultimately receive funds to which it is legally entitled for work which it alone has performed.


5. Issuance of a Preliminary Injunction is in the public interest, as the Corps Future Payment represent monies paid from the public fisc pursuant to environmental remediation contracts with the United States government. The public has a strong interest in ensuring that such funds are properly paid to EQ and are not misapplied, misappropriated, diverted or concealed.

IT IS THEREFORE ORDERED that First American Engineered Solutions, L.L.C. ("First American"), and its officers, agents, servants, employees and attorneys, and those persons in active concert or participation who receive actual notice of the order, are enjoined from disposing of, transferring, dissipating, converting, concealing, encumbering or otherwise using for any purpose any and all cash or cash equivalents, or any proceeds thereof, received by any of them as payment from the United States Army Corps of Engineers (the "Corps") with respect to services, labor and/or materials provided by EQ at the New Bedford Harbor Superfund Site in New Bedford, Massachusetts pursuant to Contract No. W912WJ-05-D-0002 (the "Corps Contract").

IT IS FURTHER ORDERED that this Order shall be filed forthwith in the clerk's office and entered of record.

Dated this 12th day of January, 2007.

BY THE COURT:



Honorable William C. Griesbach
U.S. District Court Judge